No. 84-1013

FILED
DEC 19 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

VERNAL BOUGH, THOMAS LLOYD, and EARL HOWARD,

Petitioners,

v.

PATRICK RAMIREZ,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BAKER & McKENZIE
130 East Randolph Drive
Chicago, Illinois 60601
(312) 861-2819

Attorneys for Petitioners Vernal Bough, Thomas Lloyd, and Earl Howard

Of Counsel:
FRANCIS D. MORRISSEY *
GERALD L. MAATMAN, JR.

* Counsel of Record

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

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QUESTIONS PRESENTED

1. Whether policemen "subject" a criminal defendant to the deprivation of his constitutional rights within the meaning of 42 U.S.C. § 1983 when policemen fail to intervene at the request of the criminal defendant to prevent an alleged illegal trial conducted by a county prosecutor and state court judge; and

2. Whether policemen may be mulcted in damages under 42 U.S.C. § 1983, for failing to prevent an alleged illegal criminal trial over which the policemen have no personal responsibility or control, whenever a criminal defendant protests that he is about to be illegally tried and prosecuted by a state court judge and a county prosecutor in alleged violation of Article V(d) of the Interstate Agreement on Detainers.

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v.

PATRICK RAMIREZ,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners Vernal Bough, Thomas Lloyd, and Earl Howard respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit. The Court of Appeals entered an order on August 22, 1984, reversing the judgment of the United States District Court for the Southern District of Indiana, which had dismissed the respondent's Complaint at Law.

OPINIONS BELOW

The opinion of the Court of Appeals reversing the decision of the District Court is unreported (Appendix A, *infra*). The opinion of the District Court dismissing respondent's Complaint at Law is also unreported (Appendix B, *infra*).

JURISDICTION

The Court of Appeals entered judgment on August 22, 1984, and denied a timely petition for rehearing on September 21, 1984 (Appendix C, *infra*). Petitioners filed this petition for a writ of certiorari within ninety days. Petitioners invoke the jurisdiction of this Court under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, and Article V(d) of the Interstate Agreement on Detainers, I.C. 35-33-10-4, are set forth in Appendix E, *infra*.

STATEMENT OF CASE

Petitioners Bough, Lloyd, and Howard seek review of the judgment and memorandum opinion of the Court of Appeals, which reversed the judgment of the District Court dismissing the respondent's Complaint at Law.

Respondent Patrick Ramirez filed a complaint pursuant to 42 U.S.C. § 1983 against petitioners in the United States District Court for the Southern District of Indiana. (*See* Plaintiff's Complaint at Law, set forth in Appendix D, *infra*). The complaint alleged that Fred G. Osborne, the prosecutor of Howard County, Indiana, prepared and lodged a detainer against respondent pursuant to the Interstate Agreement on Detainers, I.C. § 35-33-10-4 (hereinafter "IAD"). Prosecutor Osborne lodged the detainer with the warden of the Michigan prison where respondent was incarcerated. Prosecutor Osborne sought the return of respondent to Indiana on the detainer to face felony charges on two counts of dealing in marijuana, under Howard Superior Court Cause No. 470.

Prosecutor Osborne also sent a Request for Temporary Custody to the warden of the Michigan prison. The Honorable Carl E. Van Dorn, a judge of the Howard County Superior Court, reviewed, approved, and signed the "Request for Temporary Custody." The request listed three outstanding felony charges against respondent for dealing in marijuana, under Howard Superior Court Cause No. 424.

On July 21, 1981, Bough and Lloyd, as officers of the Sheriff's Department of Howard County, transported the respondent from Michigan to Howard County, Indiana. Respondent's transfer was based on the detainer lodged

by Prosecutor Osborne and a bench warrant issued by Judge Van Dorn for respondent's arrest. Respondent had waived his right to a pretransfer hearing to challenge his return to Howard County, Indiana.

On July 23, 1981, respondent appeared before a judge of the Howard County Superior Court. Respondent appeared for the purpose of entering a plea of guilty to the criminal charges in Cause No. 470. At that time, Prosecutor Osborne and the state court judge informed respondent that the State of Indiana intended to prosecute respondent not only for the felony charges in Cause No. 470, but also for the felony charges pending against respondent in Cause No. 424.

Respondent informed the state court judge that Prosecutor Osborne had not lodged a detainer seeking respondent's return for the criminal charges pending in Cause No. 424. Respondent also informed the state court judge that respondent would have contested the transfer had he known of the intention of the State of Indiana to prosecute respondent for the criminal charges in Cause No. 424. Nonetheless, in addition to accepting respondent's plea of guilty to the criminal charges in Cause No. 470, the state court judge proceeded to entertain the felony charges against respondent in Cause No. 424.

Respondent had been held in the Howard County Jail by the State of Indiana while awaiting trial on the criminal charges in Cause No. 424. During this period, respondent notified Bough and Lloyd, as well as Howard, sheriff of the Howard County jail, that the State of Indiana was about to prosecute respondent in apparent violation of Article V(d) of the IAD. Respondent advised petitioners that the State of Indiana would violate Article V(d) of the IAD, because Prosecutor Osborne had not listed the felony

charges in Cause No. 424 in the detainer; respondent's criminal trial was based on those charges. Respondent requested petitioners—three policemen—to take "appropriate action" to "rectify" the apparent violation of the IAD (*see* Appendix D).

On May 17, 1982, a jury found respondent guilty of the criminal charges in Cause No. 424. On June 8, 1982, the state court judge sentenced respondent to a five-year term on each of the counts in Cause No. 424, to be served concurrently with one another, but consecutively to the sentence imposed by the state court judge on the two counts in Cause No. 470.

Respondent alleged that petitioners were accountable under 42 U.S.C. § 1983 for their failure to prevent the criminal prosecution. Respondent alleged that Prosecutor Osborne and the state court judge violated Article V(d) of the IAD, since that provision provides that "temporary custody . . . shall be only for the purpose of permitting prosecution on the charges contained in one or more untried indictments, information or complaints which form the basis of the detainer. . . ." I.C. § 35-33-10-4. Respondent alleged that petitioners had a legal duty under Indiana state law "to take appropriate action to rectify the violation" of the IAD pursuant to I.C. § 35-33-10-4. This state law provision provides that "[a]ll courts, departments, agencies, officers, and employees of this state . . . are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in effectuating its purposes." I.C. § 35-33-10-4. Respondent alleged that petitioners were negligent in performing their alleged duty to enforce the provisions of Article V(d) of the IAD, inasmuch as petitioners failed to prevent the prosecution of respondent on criminal charges not listed in the prosecutor's detainer.

On July 28, 1983, petitioners filed their answers to the respondent's § 1983 complaint. Petitioners denied all substantive allegations, and asserted that respondent's complaint failed to state a cause of action. On August 19, 1983, the district court dismissed respondent's complaint for failure to state a claim upon which relief could be granted. The district court held as a matter of law that petitioners were not responsible for the alleged illegal prosecution of respondent on charges not specifically listed in the detainer documents. The district court reasoned that petitioners were responsible only for the custody of respondent, and that the state court judge and the county prosecutor were solely responsible for the preparation of the detainer documents and the subsequent criminal trial and conviction of respondent.

Respondent appealed to the Seventh Circuit. On August 22, 1984, the Court of Appeals reversed the judgment of the district court. In so deciding, the Court of Appeals determined that the State of Indiana had violated Article V(d) of the IAD by subjecting respondent to a trial on the criminal charges in Cause No. 424, since Prosecutor Osborne had not listed those charges in the detainer lodged against respondent.

The Court of Appeals further determined that Article V(d) invests in criminal defendants a substantive right to be tried only on charges listed in the detainer lodged against them. The Court of Appeals held that this substantive right is secured by the laws of the United States, and thus enforceable by 42 U.S.C. § 1983. The Court of Appeals reasoned that petitioners were accountable to respondent under § 1983, since "we are not persuaded that none of these defendants [petitioners] would have a duty to take action to prevent or remedy such a violation [of the IAD]."

REASONS FOR GRANTING THE WRIT

THE BROAD THEORY OF § 1983 LIABILITY ADOPTED BY THE SEVENTH CIRCUIT IS INCONSISTENT WITH THE DECISIONS OF THIS COURT AND OF OTHER COURTS OF APPEALS IN REQUIRING PERSONAL RESPONSIBILITY ON THE PART OF PUBLIC OFFICIALS BEFORE MAKING THEM ACCOUNTABLE IN § 1983 ACTIONS.

The Court of Appeals stated in its opinion that petitioners were accountable under § 1983 to respondent, because "[w]e are not persuaded that none of these [petitioners] would have a duty to take action to prevent or remedy a violation [of the IAD]." (Appendix A, *infra*, p. A-4). The Seventh Circuit nonetheless declined to explain how three policemen could prevent the prosecution of respondent by the county prosecutor, stop the adjudication of the criminal charge in Cause No. 424 by the state court judge, or rectify the apparent violation of Article V(d) of the IAD.

The Seventh Circuit below construed § 1983 to impose a legal duty upon policemen to monitor criminal prosecutions and to prevent illegal criminal trials. A breach of this duty gives rise to a § 1983 cause of action, notwithstanding the lack of unconstitutional conduct by policemen, and despite the fact that policemen have no personal responsibility for or control over criminal prosecutions—a process over which prosecutors and judges have exclusive control. Since policemen do not have personal responsibility for criminal prosecutions, the decision below renders policemen vicariously liable for the unconstitutional acts of state court judges and county prosecutors. For this reason, the decision of the Seventh Circuit conflicts with the precedents of this Court that reject vicarious liability as a basis of accountability under § 1983.

In construing the "subjects, or causes to be subjected" language of § 1983 to exclude a personal responsibility requirement, the Seventh Circuit below takes a position diametrically opposite to the precedents of this Court that have established that a public official is not accountable under § 1983 unless a causal connection exists between the conduct of the public official and the deprivation of the plaintiff's rights. *Martinez v. California*, 444 U.S. 277, 285 (1980); *Rizzo v. Goode*, 423 U.S. 362, 371 (1976). This Court has thus held that a § 1983 claim cannot be predicated against a public official (or entity) who has not participated in conduct causing the deprivation of the plaintiff's constitutional or federal right, or against a public official (or entity) who has had no responsibility for the acts causing the deprivation of the plaintiff's rights. *Baker v. McCollan*, 443 U.S. 136, 143-47 (1979); *Monell v. Department of Social Services*, 436 U.S. 658, 690-94 (1978). The Seventh Circuit's interpretation of the "subjects, or causes to be subjected" language in the decision below fails to accord to this Court's holdings that a defendant must have a personal involvement in the plaintiff's constitutional deprivation to be accountable under § 1983.

The decision below is also in direct conflict with the holdings of the Courts of Appeals for the Eighth and Ninth Circuits. Both of these Circuits have held that only state court judges and prosecutors can "subject" a criminal defendant to the deprivation of rights within the meaning of § 1983 in the context of an alleged illegal or unconstitutional criminal trial; both Courts of Appeals has affirmed Rule 12(b)(6) dismissals of § 1983 claims against defendants who had no personal responsibility over the criminal prosecutions alleged to have caused plaintiffs to be deprived of their constitutional rights.

In *Houghton v. South*, 743 F.2d 1438 (9th Cir. 1984), the Ninth Circuit held that a § 1983 action could not be asserted by a criminal defendant against the director of a state mental institution for the alleged unconstitutional commitment of the criminal defendant by a state court judge. The Ninth Circuit held that since the criminal defendant had been adjudged mentally ill and committed to the mental institution by a state court judge, the criminal defendant's § 1983 claim against the director of the state mental institution failed to state a cause of action. *Id.* at 1439. As the Ninth Circuit reasoned in *Houghton*:

> [The criminal defendant's] section 1983 claim with respect to the manner in which he was committed is directed toward the wrong official. [The director of the mental institution] had nothing to do with that. [The criminal defendant] was committed by a judge who, incidentally, is entitled to absolute immunity from section 1983 suits. This claim against [the director of the mental institution] was properly dismissed.

Id. Unlike the opinion of the Seventh Circuit below, the Ninth Circuit in *Houghton* held that only those personally responsible for and in control of criminal prosecutions can "subject" criminal defendants to the deprivation of constitutional rights within the meaning of § 1983.

Similarly, in *Triplett v. Azordegan*, 570 F.2d 819 (8th Cir. 1978), the Eighth Circuit held that a § 1983 action could not be asserted by a criminal defendant against a former county attorney where the alleged unconstitutional conviction of the criminal defendant was obtained by a different county prosecutor. The Eighth Circuit held that as the defendant "was in no way involved in [the plaintiff's] trial and had no authority over the persons in charge of the prosecution of [the plaintiff]," the defendant could not be accountable under § 1983, since he was not personally involved in causing the deprivation of the plain-

tiff's constitutional rights. *Id.* The Eighth Circuit in *Triplett*, contrary to the Seventh Circuit below, construed § 1983 to impose damages upon public officials personally involved in the deprivation of the plaintiff's constitutional rights; in the context of an alleged unconstitutional criminal prosecution, a § 1983 cause of action does not lie against a public official who was not involved in the trial and who had no authority over the persons in charge of the criminal prosecution.

Petitioners, three policemen, had no statutory authority or practical ability to prevent or stop the alleged illegal criminal prosecution of respondent. Although a public official is accountable under § 1983 in certain circumstances for his failure to correct the unconstitutional conduct of his subordinates, the "subjects, or causes to be subjected" language of § 1983 has never been interpreted to hold a public official liable for the acts of other public officials over which he has no control. *Rizzo v. Goode*, 423 U.S. 362 (1976).

The requisite control and personal responsibility requirement is absent in the instant case, because policemen cannot control or influence prosecutors or state court judges in their decisions to prosecute. When respondent sought dismissal of the felony charges not enumerated in the detainer documents during his criminal trial, the state court judge held that jurisdiction over respondent was not defeated by the failure of the county prosecutor to file a detainer on those charges. The Court of Appeals of Indiana for the Second District affirmed the trial court's ruling and respondent's conviction on the basis of this Court's decision in *Frisbie v. Collins*, 342 U.S. 519, 522 (1952); this Court has recently granted a petition for certiorari to determine whether the state court had jurisdiction to try respondent. *See Ramirez v. State of Indiana*, 455 N.E.2d 609 (Ind. App. 2d Dist. 1983), *cert.*

granted, 53 U.S.L.W. 3324 (U.S. Oct. 30, 1984) (No. 84-5059). Section 1983 has no logical parameters if policemen have a duty to ensure that state court judges correctly exercise their jurisdiction over criminal defendants; the Seventh Circuit's holding is all the more incongruous if this Court should determine that the state court judge's ruling on jurisdiction was based on bad law.

In Indiana, as in other states, the process of criminal prosecution is controlled exclusively by prosecuting attorneys and state court judges. *See* I.C. § 35-34-1-1(a); *In Re Order For Indiana Bell Telephone to Disclose Records*, 409 N.E.2d 1089, 1091 (Ind. 1980). Petitioners were under a duty imposed by state law to keep respondent in jail, I.C. § 36-8-10-9(4), (7); to heed all orders of the county prosecutor in holding respondent, I.C. § 35-44-3-7; and to retain custody of respondent pending further order of the state court judge, I.C. § 35-33-10-2. Petitioners were powerless to intervene in respondent's criminal trial, *see, e.g., McGruder v. Necaise*, 733 F.2d 1146, 1148 (5th Cir. 1984) ("the decision to initiate, maintain, or dismiss criminal charges is at the core of the prosecutorial function"), but under the Seventh Circuit's holding, petitioners are to be mulcted with § 1983 damages despite their lack of personal responsibility for respondent's criminal prosecution.

It is logically inconsistent to hold that law enforcement officials have no constitutional duty to prevent a rape, *Wright v. City of Ozark*, 715 F.2d 1513 (8th Cir. 1983), or to eliminate police misconduct, *Rizzo v. Goode*, 423 U.S. 362 (1976), while at the same time holding that policemen are obligated by the Constitution or federal law to prevent alleged illegal criminal prosecutions. Since federal courts hesitate to enjoin or correct allegedly illegal prosecutions by state officials absent extraordinary circumstances, *see Younger v. Harris*, 401 U.S. 37 (1971);

Douglas v. City of Jeannette, 319 U.S. 157 (1943), it is incongruous to require that policemen interfere with the acts of prosecutors and the decisions of judges in state criminal proceedings.

CONCLUSION

This Court has made clear "that not every injury in which a state official had played some part is actionable under [§ 1983]." *Martinez v. California*, 444 U.S. 277, 285 (1980). In contrast, the decision below reflects an intention to construe § 1983 without any limitation as to a personal responsibility requirement. The lot of policemen is indeed unhappy if they must choose between dereliction of their duties as policemen, or suffer inclusion in § 1983 actions by any aggrieved prisoner complaining of his confinement, the terms of his bail, or the course of his criminal trial. *Cf. Pierson v. Ray*, 386 U.S. 547, 555 (1967). The Seventh Circuit's decision will create confusion in the differentiation of responsibilities of policemen as opposed to prosecutors and judges. The public interest in efficient government will be impaired, for the portent of the decision below underscores the observation that "civil rights litigation has become almost an occupational hazard of public life." *Harris v. County of Racine*, 512 F. Supp. 1273, 1275 (E.D. Wis. 1981).

Petitioners urge this Court to grant their petition for a writ of certiorari to provide guidance to public officials and lower federal courts. In addition, this Court has the opportunity to consider petitioners' claims in tandem with respondent's appeal of the propriety of his criminal conviction. *Ramirez v. State of Indiana*, 455 N.E.2d 609 (Ind. App. 2d Dist. 1983), *cert. granted*, 53 U.S.L.W. 3324 (U.S. Oct. 30, 1984) (No. 84-5059).

Finally, this case provides this Court with the opportunity to clarify the issue left open in *Parratt v. Taylor*, 451 U.S. 527 (1981)—the proper basis and ultimate scope of § 1983 liability. Two members of this Court have recently noted that the Court should attempt to resolve the perplexing issue of determining the outer bounds of § 1983 liability. *Jackson v. City of Joliet*, 715 F.2d 1200 (7th Cir. 1983), *cert. denied*, ____ U.S. ____, 79 L.Ed.2d 720 (1984) (White, J., and Rehnquist, J., dissenting from denial of cert.). Moreover, the propriety of extending § 1983 liability to public officials without citation of any single statutory or case law authority, as in the decision below, is contrary to sound judicial decision-making, especially when § 1983 suits filed by prisoners now constitute a significant percentage of federal trial dockets. *See Pulliam v. Allen*, ____ U.S. ____, 104 S.Ct. 1970, 1982 (1984) (Powell, J., dissenting); *Maine v. Thiboutot*, 448 U.S. 1, 27 n.16 (1980); *Butz v. Economou*, 438 U.S. 478, 526 (1978) (Rehnquist, J., concurring in part and dissenting in part). For these reasons, petitioners request this Court to issue a writ of certiorari to correct the erroneous and unprecedent holding of the court of appeals.

Respectfully submitted,

BAKER & McKENZIE
130 East Randolph Drive
Chicago, Illinois 60601
(312) 861-2819

Attorneys for Petitioners
Vernal Bough,
Thomas Lloyd, and Earl Howard

Of Counsel:
FRANCIS D. MORRISSEY*
GERALD L. MAATMAN, JR.

* Counsel of Record

APPENDICES

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APPENDIX A

[UNPUBLISHED ORDER NOT TO BE CITED PER CIRCUIT RULE 35]

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Submitted August 15, 1984*

August 22, 1984.

Before

Hon. WALTER J. CUMMINGS, *Chief Judge*
Hon. RICHARD D. CUDAHY, *Circuit Judge*
Hon. JOEL M. FLAUM, *Circuit Judge*

PATRICK RAMIREZ,

Plaintiff-Appellant,

No. 83-2702 vs.

VERNAL BOUGH, Sergeant of the Howard County Sheriff's Department, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. 83-C-954
Hon. William Steckler, *Judge.*

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* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." *See* Rule 34(a), Fed. R. App. P.; Circuit Rule 14(f). No such statement having been filed, the appeal has been submitted on the briefs and record.

ORDER

This *pro se* appeal challenges the dismissal of plaintiff's civil action based on 42 U.S.C. § 1983. The underlying action, also *pro se*, alleged that the defendants deprived him of rights secured by Article V of the Interstate Agreement on Detainers (IAD), 18 U.S.C. Appendix.

In March 1981, the plaintiff was incarcerated in the Southern Michigan Prison where he was serving a sentence of 2 to 20 years for possession of cocaine with intent to deliver. A detainer was lodged against him by the Howard County, Indiana prosecutor's office on March 19, 1981. The detainer listed and included Information Affidavits for Cause No. 470, two counts of dealing in marijuana—one based on the events of December 17, 1979 and one on the events of December 21, 1979. Plaintiff waived his right to a pretransfer hearing, pursuant to the provisions of Article IV(d) of the IAD, and agreed to be returned to Howard County, Indiana to stand trial on these charges. The Howard County prosecutor filed a formal "Request for Temporary Custody" on June 16, 1981; this request, however, listed the offense as Cause No. 424, Counts I, II and III, dealing in marijuana. Plaintiff was shortly thereafter transferred to Howard County by Vernal Bough and Thomas Lloyd of the Howard County Sheriff's Office, two of the named defendants. When the plaintiff appeared in Howard County Superior Court II to plead guilty to the two counts listed in the detainer, he was informed that he was to be prosecuted for three counts of dealing in a schedule IV controlled substance. According to the plaintiff, the June 16 listed charges contained in Cause No. 424 were for dealing in marijuana, a Class D felony, while the trial charges (dealing in a schedule IV controlled substance) were for a Class C felony.

Plaintiff informed the state court at that time that he had waived his right to a pretransfer hearing on the understanding that he was to be prosecuted for only two counts of dealing in marijuana, listed as Cause No. 470, and that he would have contested his transfer if he had known that he would be prosecuted for three Class C

felonies. Plaintiff states that he also informed defendants Bough, Lloyd and Sheriff Earl Howard that there had been a violation of the IAD. Later he conveyed the same information to Marge Baker, the Indiana Detainer Administrator. Howard and Baker are the other named defendants in the § 1983 action. The complaint states that plaintiff requested each of the four defendants to take action to correct the situation. On May 17, 1982, the plaintiff was convicted by a jury of three Class C felony offenses in Cause No. 424, and he was later sentenced to five years.

In his civil complaint, plaintiff claims that the defendants failed in their duty to enforce the provisions of the IAD and requests money damages from each of them. Defendants Bough, Lloyd, and Howard answered, denying that they had been requested by plaintiff to take corrective action or that they had any duty under the IAD to enforce the IAD provisicns. Defendant Baker, represented by the state Attorney General, was granted an extension to file an answer. Before the answer from defendant Baker was received, the district court, on its own motion, dismissed the complaint for failure to state a claim upon which relief could be granted. The district court held that none of the named defendants could be held responsible for the alleged violation of the IAD provisions, reasoning that the decision to prosecute plaintiff on charges other than those listed in the detainer was a decision made by the county prosecutor and overseen by the county judge. The court noted that neither the prosecutor nor the judge were listed as named defendants and that both would be absolutely immune from civil suit for their actions.

The first question we address is whether there was a violation of the IAD. A prisoner may be transferred under the authority of that interstate compact in one of two ways: the prisoner himself may request a final disposition to be made on the charges listed in the detainer (Article III) or the receiving state may request the prisoner's transfer (Article IV). Article V(d) states that the receiving state's temporary custody under either of those pro-

visions "shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for any other charge or charges arising out of the same transaction." The Supreme Court has indicated in dicta that when a prisoner initiates a transfer under Article III, that request "automatically extends to *all* pending charges in the receiving state." *Culyer v. Adams*, 449 U.S. 433, 444 (1981) (emphasis in original). Although the basis for this statement is not recited, it appears to be sub-section (d) of Article III. Article IV does not contain a parallel provision, and the Supreme Court in *Culyer* notes several respects in which prisoners have different rights under Article III and Article IV. Consequently, we find that the plaintiff's complaint states an arguable violation of his rights under Article V(d) of the IAD.

We are not persuaded that none of these defendants would have a duty to take action to prevent or remedy such a violation. This is particularly true of defendant Baker who had not even filed an answer at the time the case was dismissed. Baker is the individual designated by the State of Indiana to "promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement [and] provide, within and without the state, information necessary to the effective operation of the [IAD]." IAD, Article VII.

In summary, on this record several issues have yet to be determined before it can be said that, as a matter of law, the complaint fails to state a claim on which relief can be granted. It may be that the case is one appropriate for dismissal at some point,[1] but that point has not yet been reached.

REVERSED AND REMANDED.

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[1] For example, the record does not indicate whether the charges contained in Cause No. 424, on which the plaintiff was tried, arose from the same transaction as those contained in Cause No. 470, listed in the detainer. If they did, it is possible that there was no violation of the term of the IAD. *See* Interstate Agreement on Detainers, Article V(d).

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

Cause No. IP 83-954-C

PATRICK RAMIREZ,

Plaintiff,

vs.

VERNAL BOUGH, Sergeant of the Howard County Sheriff's Department;
THOMAS LLOYD, Jailer of the Howard County Sheriff's Department;
EARL HOWARD, Sheriff of Howard County; and
MARGE BARKER, Interstate Agreement on Detainer Administrator for Indiana,

Defendants.

ENTRY

This matter comes before the Court on plaintiff's civil rights complaint and defendants' answer thereto.

After review of the pleadings, it appears that all of the defendants named by plaintiff have no authority to prosecute plaintiff and, thus no claim valid under law can be made against them.

Plaintiff is an inmate at the Westville Correctional Center at Westville, Indiana. He has sued the Sheriff of Howard County, two of his staff, and the Indiana Administrator of the Interstate Agreement on Detainers. In his complaint, Mr. Ramirez alleges that state officials violated the Interstate Agreement on Detainers by prosecuting plaintiff on state criminal charges not specifically identified on the detainer document.

The Court can take judicial notice of the fact that the Sheriff and members of his staff are responsible only for the custody of plaintiff, not for any prosecution of actions against him. As this is a civil rights complaint, and not a petition for writ of habeas corpus, petitioner must show personal involvement of the defendants in depriving plaintiff of his constitutional rights. *See, Perry v. Elrod*, 436 F. Supp. 229 (N.D. Ill. 1977); *Cochran v. Rowe*, 438 F. Supp. 566 (N.D. Ill. 1977).

In Indiana, the institution of criminal proceedings is vested with the prosecuting attorney. See, Indiana Code, I.C. 35-34-1-1(b) (as amended 1982). Thus, the decision to prosecute Mr. Ramirez on charges other than those contained in the detainer was made by the particular county prosecutor. Petitioner has not named the prosecutor as a party defendant and if he had, the actions of the prosecutor and his deputies are protected by absolute immunity. *See, Imbler v. Pachtman*, 424 U.S. 409 (1976). Another possible defendant, although not alleged as such by Mr. Ramirez, is the Judge of the Howard Superior Court since the request to be tried on the charges contained in the detainer had to be filed in that court. But again, the actions of the judge are protected by the absolute immunity accorded the judiciary. *See, Stump v. Sparkman*, 435 U.S. 349 (1978); *Imbler v. Pachtman*, 424 U.S. 409 (1976).

Thus, it appears that any action plaintiff may have is barred by absolute immunity; it is equally clear that none of the named defendants can be held responsible for any violation of the Interstate Agreement on Detainers.

Plaintiff's complaint is, therefore, ORDERED DISMISSED.

Dated this 19th day of August, 1983.

/s/ William E. Steckler
Judge
United States District Court
Southern District of Indiana

Copies:

Patrick Ramirez
#24767
Westville Correctional Center
P. O. Box 473
Westville, Indiana 46391

Richard E. Hagenmaier, D.A.G.
Office of the Attorney General
of the State of Indiana
219 State House
Indianapolis, Indiana 46204

Daniel J. Gamble, Esquire
Howard County Attorney
421 West Sycamore Street
Post Office Box 478
Kokomo, Indiana 46901

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

September 21, 1984.

Before

Hon. WALTER J. CUMMINGS, Chief Judge
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. JOEL M. FLAUM, Circuit Judge

PATRICK RAMIREZ,

Plaintiff-Appellant,

No. 83-2702 vs.

VERNAL BOUGH, THOMAS LLOYD, EARL HOWARD and MARGE BARKER,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. 83-C-954—Hon **William E. Steckler,** *Judge.*

ORDER

On consideration of the petition for rehearing and suggestion for rehearing *en banc* filed in the above-entitled cause by defendants-appellees, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing, Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

APPENDIX D

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

Cause No. IP83 954C

PATRICK RAMIREZ, Indiana Inmate Number 24767,
Plaintiff,

vs.

VERNAL BOUGH, Sergeant of the
Howard County Sheriff's Department;
THOMAS LLOYD, Jailer of the
Howard County Sheriff's Department;
EARL HOWARD, Sheriff of Howard County; and,
MARGE BARKER, Interstate Agreement on
Detainer Administrator for Indiana,
Defendants.

COMPLAINT FOR DECLARATORY RELIEF AND MONETARY DAMAGES

I. PRELIMINARY STATEMENT:

1. Plaintiff Patrick Ramirez brings this action pursuant to 42 U.S.C. §1983 contending that the Defendants, individually and jointly, under color of state law, have denied him due process in violation of the Fourteenth Amendment of the United States Constitution and of rights secured for him by virtue of Article V(d) of the

Interstate Agreement on Detainers. The basis of Plaintiff's contention rests upon the fact that on July 21st, 1981, Plaintiff was transfered from the State of Michigan, to the State of Indiana, pursuant to Article IV of the Interstate Agreement on Detainers, 18 U.S.C.App., and was thereupon criminally prosecuted by the State of Indiana for criminal charges in violation ot Article V(d) of the Interstate Agreement on Detainers.

2. Plaintiff seeks declaratory judgment that the Defendants's actions or inactions, as hereinafter described, violated Article V(d) of the Interstate Agreement on Detainers and thereby denied Plaintiff Ramirez of due process in violation of the Fourteenth Amendment of the United States Constitution. Plaintiff further seeks tenthousand dollars ($10,000) from each Defendant as compensation for the injuries sustained by him as a direct result of the Defendants's unlawful conduct.

II. JURISDICTION:

3. The Court has jurisdiction to hear this case pursuant to 28 U.S.C. §1331, which provides that the District Courts of the United States "shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

4. The Court has further jurisdiction to hear this case pursuant to 28 U.S.C. §1343(a)(3) since this is a civil action authorized by 42 U.S.C. §1983, in which Plaintiff Ramirez seeks "To redress the deprivation, under color of state law, statute, ordinance, regulation, custom or usage, or any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

5. The Court has further jurisdiction to hear this case pursuant to 28 U.S.C. §1343(d) since this is a civil action authorized by 42 U.S.C. §1983, in which Plaintiff Ramirez seeks "To recover damages or (and) to secure equitable or other relief under any Act of Congress providing for the protection of civil rights. . ."

6. The Court has jurisdiction to grant Plaintiff Ramirez's request for declaratory relief pursuant to 28 U.S.C. §§2201 and 2202, as well as Rule 57 of the Federal Rules of Civil Procedure, since there is an actual controversy existing between the parties as to the Plaintiff's rights and the lawfulness of the Defendants's actions or inactions, requiring a decree of declaration from this Court settling the controversy.

7. Plaintiff's action is authorized by 42 U.S.C. §1983, which provides a remedy for him to seek redress for any deprivation imposed upon him by any person working under color of any state law, of any right, privilege, or immunity secured for him by the Constitution or laws of the United States.

8. This action also arises directly under the Fourteenth Amendment of the United States Constitution and 18 U.S.C.App., to-wit: the Interstate Agreement on Detainers.

III. VENUE:

8. This Court has venue to hear this case pursuant to 28 U.S.C. §1391(b) since jurisdiction of the Court is not founded solely on diversity of citizenship and all of the named Defendants reside within the Court's judicial district. Furthermore, this Court is the proper division to hear this case pursuant to 28 U.S.C. §94(b)(1), since all of the named Defendants reside in either Howard or Marion Counties of the State of Indiana.

IV. PARTIES:

Plaintiff

9. Plaintiff Patrick Ramirez is currently an inmate of the Indiana Department of Correction. He is incarcerated at the Westville Correctional Center, where he is serving three concurrent five year terms of imprisonment which were imposed upon after having been found guilty of three counts of dealing in a schedule IV controlled substance, Class C felonies, under Cause Number 424, in

the Howard Superior Court, NO. II. At the time this action arose, Plaintiff was an inmate at the Southern Michigan Prison, located in Jackson, Michigan. From July 21st, 1981, until June 8th, 1982, Plaintiff was in confinement at the Howard County Indiana Jail, awaiting trial and sentencing on the criminal charges complained about herein.

Defendants

10. Defendant Vernal Bough is a duly appointed officer of the Howard County Indiana Sheriff's Department. Defendant Bough holds the rank of Sergeant and his job duties entail, among other things, the transporting of prisoners from other states to Indiana when the Howard County Prosecutor makes a request for temporary custody of prisoners pursuant to the Interstate Agreement on Detainers. Under state law, Defendant Bough has a legal duty to strictly enforce the terms of the Interstate Agreement on Detainers.

11. Defendant Thomas Lloyd is a duly appointed officer of the Howard County Indiana Sheriff's Department. Defendant Lloyd is assigned as a jailer and his job duties entail, among other things, the transporting of prisoners from other states to Indiana when the Howard County Prosecutor makes a request for temporary custody of prisoners pursuant to the Interstate Agreement on Detainers. Under state law, Defendant Lloyd has a legal duty to strictly enforce the terms of the Interstate Agreement on Detainers.

12. Defendant Earl Howard is the duly elected Sheriff of Howard County Indiana. In that capacity, Defendant Howard is responsible for the management and supervision of the Howard County Indiana Jail and Sheriff's Department. He assigns tasks to his subordinates, including orders to transfer prisoners from other states to Indiana when the Howard County Prosecutor makes a request for temporary custody of prisoners pursuant to the Interstate Agreement on Detainers. Under state law, Defendant Howard has a legal duty to strictly enforce the terms of the Interstate Agreement on Detainers.

13. Defendant Marge Barker is the duly appointed and qualified Interstate Agreement on Detainers Administrator for the State of Indiana. In this capacity, Defendant Barker is responsible for, among other things, coordinating transfers of prisoners between the State of Indiana and the party states of the Interstate Agreement on Detainers. She is further responsible for promulgating rules and regulations necessary to carry out more effectively the terms and provisions of the Interstate Agreement on Detainers and has a legal duty to disseminate information necessary to ensure the effective operation of the terms of the Interstate Agreement on Detainers. Under state law, Defendant Barker has a legal duty to enforce the terms of the Interstate Agreement on Detainers.

V. Factual Allegations:

14. On March 16th, 1981, Plaintiff Ramirez was incarcerated at the Southern Michigan Prison, where he was serving a two to twenty (2-20) year sentence for possession of cocaine with intent to deliver, when the Howard County Indiana Prosecutor's Office lodged a detained against him for two counts of dealing in marijuana, class D felonies, under Howard Superior Court II Cause Number 470. (See attached exhibit "A").

15. On March 19, 1981, and in good faith, Plaintiff Ramirez waived his right to a pretransfer hearing to challenge the validity of his return to Howard County Indiana and thereby agreed to voluntarily return for the sole purpose of reaching a final disposition on the two counts of dealing in marijuana under Howard County Superior Court Cause Number 424. (See attached exhibit "B").

16. On June 16th, 1981, the Howard County Prosecutor filed its formal "Request for Temporary Custody", however, the request was for three counts of dealing in marijuana, under Howard County Superior Court Cause Number 424. (See attached exhibit "C").

17. On July 21st, 1981, Defendants Vernal Bough and Thomas Lloyd travelled to the Southern Michigan Prison

and obtained temporary custody of Plaintiff Ramirez. Thereupon, Defendants Bough and Lloyd transfered Plaintiff Ramirez to the Howard County Indiana Jail.

18. On July 23rd, 1981, Plaintiff Ramirez made an appearance before the Howard County Superior Court II. The purpose of this appearance was suppose to be for the sole purpose of Plaintiff Ramirez entering a plea of guilty to the two counts of dealing in marijuana, class D felonies, under Cause Number 470. Nevertheless, Plaintiff Ramirez was informed that the State of Indiana intended to further prosecute him for three counts of dealing in a schedule IV controlled substance, class C felonies, under Cause Number 424. Thereupon, Plaintiff Ramirez told the Howard Superior Court that he was led to believe that when he waived his right to a pretransfer hearing at the Southern Michigan Prison, he would only be prosecuted by Howard County authorities for the charges under Cause Number 470. Plaintiff further advised the Howard Superior Court that he had not been notified that upon his return to Howard County he would also be prosecuted for the Class C felonies, that no detainer had been lodged against him for these crimes and that had he been aware that the Howard County Prosecutor was going to prosecute him for the Class C felonies he would have contested his transfer.

19. Upon gaining knowledge of the State's intent to prosecute him on the Class C felonies under Cause Number 424, Plaintiff Ramirez notified Defendants Bough, Lloyd and Earl Howard that there had been a violation of Article V(d) of the Interstate Agreement on Detainers because the State was about to prosecute him for charges that did not form the basis of the detainer lodged against him and did not arise out of the same transaction as did the charges involved in Cause Number 470. Plaintiff Ramirez then requested that Defendants Bough Lloyd, and Howard take appropriate action to rectify the violation.

20. During September of 1981, Plaintiff Ramirez, by telephone, informed Defendant Marge Barker that

Howard County authorities had violated Article V(d) of the Interstate Agreement on Detainers by prosecuting him for criminal charges which did not form the basis of the detainer lodged against him in Michigan and for charges which did not arise out of the same transaction as did the charges which formed the basis of the detainer upon which his transfer was initiated by the Howard County Prosecutor. Plaintiff Ramirez then requested Defendant Barker to take appropriate action to rectify the violation.

21. Defendants Bough, Lloyd, Howard, and Barker failed and refused to rectify the above violation and on May 17th, 1982, Plaintiff Ramirez was found guilty, by a jury, of the three Class C felonies under Howard County Superior Court Cause Number 424.

22. On June 8th, 1982, the Howard Superior Court sentenced Plaintiff Ramirez to five years on each of the three Class C felonies, to be served concurrently with one another, but consecutively to the sentence imposed for the class D felonies under Cause Number 470.

23. Article V(d) of the Interstate Agreement on Detainers provides in pertinent part:

> "The temporary custody referred to in this agreement *shall be only for the purpose of permitting prosecution on the charge or charges* contained in one or more untried indictments, information or complaints *which form the basis of the detainer or detainers or for the prosecution of any other charge or arising out of the same transaction. . .*" (emphasis added).

24. That Article V(d) of the Interstate Agreement on Detainers clearly places a limit on the party state of said agreement that once temporary custody of a prisoner is obtained, the prisoner may *only* be prosecuted for the charges which form the basis of the detainer or for additional charges arising out of the same transaction as do the charges from which the detainer results.

25. That the charges which formed the basis of the detainer in this case were two counts of dealing in mari-

juana, Class D felonies, and were filed under Howard Superior Court Cause Number 470. These charges occurred on December 17 and 21, 1979. The charges in Howard Superior Court Cause Number 424 involved three counts of dealing in a schedule IV controlled substance and occurred on January 29, March 12, and March 18, 1979. There was never a detainer lodged against Plaintiff Ramirez for the dealing in a schedule IV controlled substance charges and the charges in Cause Number 424 did not arise out of the same transaction as the charges in Cause Number 470 did. Furthermore, temporary custody of Ramirez was sought and obtained only by the Howard County Prosecutor for the dealing in marijuana charges under Cause Number 470.

26. Pursuant to Article 9, §3, of I.C. 35-2.1-2-4, the Defendants herein were under a legal duty to strictly enforce the provisions of the Interstate Agreement on Detainers and therefore should have taken precautionary action to ensure that Plaintiff Ramirez was prosecuted only within the limitations and terms of the provisions of the Interstate Agreement on Detainers.

27. That Defendants, individually and jointly, were negligent in their duty to enforce the provisions of the Interstate Agreement on Detainers by failing and refusing to rectify the above violation when it was brought to each of their attention and because of said negligence Plaintiff Ramirez has suffered deprivation rights, privileges, and immunities guaranteed to him by the Interstate Agreement on Detainers.

28. That Plaintiff Ramirez was fraudulently tricked and deceived into waiving his rights to a pretransfer hearing to challenge the validity of his return to Howard County.

29. At all times mentioned in this complaint the Defendants acted under color of state law.

VI. First Cause Of Action:

30. Plaintiff Ramirez has been denied his right, which is guaranteed to him by Article V(d) of the Interstate

Agreement on Detainers, to *only* be prosecuted for criminal charges which form the basis of the detainer or for charges arising out of the same transaction as the charges upon which the detainer is based, in violation of 18 U.S.C.App.

VII. Second Cause Of Action:

31. Plaintiff Ramirez has been denied due process of law in violation of the Fourteenth Amendment of the United States Constitution.

VIII. Injury:

32. Plaintiff Ramirez has suffered irreparable and immediate injury under 18 U.S.C.App., Article V(d), and the Fourteenth Amendment of the United States Constitution.

33. Plaintiff Ramirez has no adequate remedy at law and there is an actual controversy between the parties requiring a declaration of Plaintiff's rights and the legality or illegality of the Defendant's actions or inactions as hereinbefore described.

IX. Prayer For Relief:

WHEREFORE, Plaintiff prays and demands the following relief:

1. That the Court assume jurisdiction over this matter and set the complaint down for an early trial date;

2. That the Court issue a decree of declaration that the defendants' actions or inactions have violated Plaintiff's rights under 18 U.S.C.App., and the Fourteenth Amendment of the United States Constitution; and,

3. That the Court award Plaintiff the sum of $10,000 from each Defendant for the injuries sustained by him in this cause of action.

Respectfully submitted,

/s/ PATRICK RAMIREZ
Plaintiff pro se
DOC#24767
Westville Correctional Center
P.O. Box 473
Westville, Indiana 46391

STATE OF INDIANA
COUNTY OF LAPORTE—SS:

OATH OF AFFIRMATION

I, Patrick Ramirez, do hereby affirm under the pains and penalties for perjury that all of the foregoing statements are true and correct to the best of my knowledge and belief.

/s/ PATRICK RAMIREZ

Subscribed and sworn to before me this 24th day of June, 1983.

/s/ NEOMIA BEAM
Notary Public
Residing in LaPorte County, Indiana

MY COMMISSION EXPIRES ON:
June 27th, 1986

JURY DEMAND

The Plaintiff, Patrick Ramirez, hereby demands that this cause be tried by a duly selected, sworn, and impanelled jury.

/s/ PATRICK RAMIREZ

PLAINTIFF'S EXHIBIT "A"

(Letterhead Of)

OFFICE OF THE PROSECUTING ATTORNEY
62nd Judicial Circuit
Kokomo, Indiana 46901

* * *

March 16, 1981

Gary Mintzes, Warden
State Prison of Southern Michigan
4000 Cooper Street
Jackson, Michigan 49201

Re: State of Indiana
Vs: Patrick Ramirez (Jackson DOC#A16D3193)
Howard Superior Court II, Cause #470

Dear Warden Mintzes:

Enclosed please find certified copies of our Information Affidavits and Arrest Warrant on the above named individual. Please file these documents as a detainer on our behalf against Mr. Ramirez.

It is our understanding, through defendant's attorney, that Mr. Ramirez will be willing to sign a waiver (Form II) in this matter.

Please note the Court's address as follows: Howard Superior Court, Division II, Third Floor, Courthouse, Kokomo, Indiana 46901.

If you require further information, please feel free to contact my office.

Yours truly,

/s/ Fred G. Osborn
Prosecuting Attorney

Enc.

cc: Mr. Jeffrey A. Lockwood
Defendant's Attorney

FGO/m

D-12

CLERK'S CERTIFICATE

State of Indiana
Howard County—ss:

STATE OF INDIANA
vs.
PATRICK RAMIREZ Cause 470

I, DONALD C. HOWARD, SR., Clerk of the Circuit Court, within and for the County of Howard and the State of Indiana, the same being a Court of Record having a seal, do hereby certify that the ATTACHED is a full, true and complete copy of COUNT I INFORMATION FOR DEALING IN MARIJUANA FILED FEBRUARY 19, 1980, COUNT II INFORMATION FOR DEALING IN MARIJUANA FILED FEBRUARY 19, 1980 AND THE BENCH WARRANT ISSUED FEBRUARY 22, 1980 IN THE ABOVE CAPTIONED CAUSE as the same appears upon the records of said Court in my custody as such Clerk and on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court, at the City of Kokomo, Indiana, this 13 day of March, A.D. 1981.

Signed Donald C. Howard, Sr.
Clerk of Howard Circuit
Court of Indiana

D-13

IN THE HOWARD SUPERIOR COURT
DIVISION II
(Filed February 19, 1980)

State of Indiana
County of Howard—ss:

STATE OF INDIANA
vs.
PATRICK RAMIREZ

No. 470
COUNT I

INFORMATION FOR
DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 17th day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez late of said county, did then and there knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant

[Notarization omitted in printing.]

D-14

IN THE HOWARD SUPERIOR COURT
DIVISION II
(Filed February 19, 1980)

State of Indiana
County of Howard—ss:

STATE OF INDIANA
vs. No. 470
PATRICK RAMIREZ COUNT II

INFORMATION FOR
DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 21st day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez late of said county, did then and there unlawfully knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant

[Notarization omitted in printing.]

D-15

March 19, 1981

Deputy Cason:

re: 163193 Ramirez, Patrick

The Howard County, Indiana, prosecutor has lodged a detainer against Mr. Ramirez, charging him with two counts of delivery of marijuana and one bench warrant.

/s/ Sandy Phelps

sp
cc: Counselor
RO Folder
Resident
Lansing RO

D-16

Bond $50,000

BENCH WARRANT
Superior Court II
(Filed March 10, 1980)

No. 470

STATE OF INDIANA
vs.
PATRICK RAMIREZ

Curtis Welke
Deputy Prosecuting Attorney

State of Indiana, Howard County, ss:

The State of Indiana to the Sheriff of Howard County, Greeting:

You are hereby commanded to arrest Patrick Ramirez if he may be found in your balliwick, so that you have his body before the Judge of Superior Court II of Howard County, instanter, and then and there to answer the State of Indiana on a charge of Count I Dealing in Marijuana and Count II Dealing in Marijuana and raise the order of the Court thereon, and return this writ, on a charge of Count I Dealing in Marijuana and Count II Dealing in Marijuana and abide the order of the Court thereon, and return this writ.

WITNESS, The Clerk and Seal of said Court this 22 day of February, 1980.

/s/ Donald C. Howard, Sr.
Clerk.

SHERIFF'S RETURN

State of Indiana
County of Howard—ss:

I, Donald C. Howard, Sr., Clerk of the Superior Court, Division Two, of said County of Howard in the State of Indiana, do hereby certify that the within and preceding pages contain a full, complete, true and exact copy of an Information Affidavit and Arrest Warrant, on file in a cause record in Cause No. 470, State of Indiana, Plaintiff, vs. Patrick Ramirez, Defendant.

Given under my hand and seal of office, at Kokomo, in said County of Howard in the State of Indiana, this 16 day of March, 1981.

DONALD C. HOWARD, SR., CLERK OF
HOWARD SUPERIOR COURT, DIVISION II

/s/ Donald C. Howard, Sr.

State of Indiana
County of Howard—ss:

I, Carl E. Van Dorn, Judge of the Superior Court, Division Two, of Howard County, State of Indiana, presiding in said County of Howard, do hereby certify that Donald C. Howard, Sr., whose name appears to be signed to the above certificate, is and was, at the time of signing of the same, the Clerk of the Howard Superior Court, Division II therein mentioned, and which was the proper person to make said certificate and that the same is in due form.

Given under my hand officially this 16 day of March, 1981.

/s/ Carl E. Van Dorn
JUDGE
HOWARD SUPERIOR COURT, DIVISION II

State of Indiana
County of Howard—ss:

I, Donald C. Howard, Sr., Clerk of the Superior Court, Division Two, Howard County, Indiana, do hereby certify that Carl E. Van Dorn, Judge, Superior Court, Division II for Howard County, Indiana, is and was, at the time of signing the same, the duly elected, qualified and acting Judge of said Court herein mentioned and as such was the proper person to make said certificate, and that the same is in due form.

Given under my hand and seal of office, at Kokomo, in said County of Howard, State of Indiana, this 16 day of March, 1981.

DONALD C. HOWARD, SR., CLERK OF
HOWARD SUPERIOR COURT, DIVISION II

/s/ Donald C. Howard, Sr.

PLAINTIFF'S EXHIBIT "B"

MICHIGAN DEPARTMENT OF CORRECTIONS
NOTICE OF UNTRIED INDICTMENT,
INFORMATION OR COMPLAINT
AND OF RIGHT TO REQUEST DISPOSITION

AGREEMENT ON DETAINERS: Form 1

* * *

Inmate's Name	Inmate's #	Institution
Patrick Ramirez	A163193	SPSM-JL

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untried indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the sources and contexts of each.

> Howard County, Indiana—two counts of delivery of marijuana; bench warrant

You are hereby further advised that by the provisions of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the Agreement, after you have caused to be delivered to said prosecuting officer and said court written notice of the place of your imprisonment and your said request, together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, in-

formations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby, or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify Supervisor of Records of the institution in which you are confined.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof, in such event, you may oppose the request that you be delivered to such prosecuting officer or court. You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery.

Dated:
March 19, 1981

/s/ Barry Mintzes
Warden

Date Received
3-19-81

Inmate's Name
/s/ Patrick Ramirez

You are further advised that by a decision in the United States Supreme Court in *Cuyler v. Adams*, No. 78-1841, decided January 21, 1981, you have the right to judicial pre-transfer hearing, before being transferred to another jurisdiction pursuant to Article IV of the Detainer Agreement.

/s/ SANDRA PHELPS

/s/ PATRICK RAMIREZ
(Received)

PLAINTIFF'S EXHIBIT "C"

* * * * *

REQUEST FOR TEMPORARY CUSTODY

Gary Mintzes, Warden, State Prison of Southern Michigan, 4000 Cooper Street, Jackson, Michigan 49201

Please be advised that Patrick Ramirez #A16D3193 who is presently an inmate of your institution, is under information in the 62nd Judicial Circuit of which I am the Prosecuting Attorney. Said inmate is therein charged with the offenses enumerated below:

Offense

Counts I, II and III Dealing in Marijuana, under Cause #424, Howard Superior Court II.

I propose to bring this person to trial on this information within the time specified in Article IV(c) of the Agreement.

In order that proceedings in this matter may be properly had, I hereby request temporary custody of such person pursuant to Article IV(a) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction, I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial.

/s/ Fred G. Osborn
Prosecuting Attorney
62nd Judicial Circuit
State of Indiana

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts cited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with the terms and the provisions of the Agreement on Detainers.

Dated: June 16, 1981 /s/ Carl E. Van Dorn
Judge
Howard Superior Court II

cc: Patrick Ramirez
Marge Barker, Agreement Admin. (IN)
Earl H. Nill, Agreement Admin. (MI)
Honorable Carl E. Van Dorn

APPENDIX E

STATUTES INVOLVED

42 U.S.C. § 1983 (Supp. IV 1980)

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

I.C. 35-33-10-4

Agreement on detainers; defendants confined in other jurisdictions of United States

Sec. 4. Securing attendance of defendants confined as prisoners in institutions of other jurisdictions of the United States—Agreement on detainers.

* * *

Article 5

* * *

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the

same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

* * *

Article 9

* * *

3. All courts, departments, agencies, officers and employees of this state and its political subdivision are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes.

* * *

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

ORIGINAL

No. 84-1013

Supreme Court, U.S.
FILED
MAR 7 1985
ALEXANDER L. STEVAS
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

VERNAL BOUGH, THOMAS LLOYD, and EARL HOWARD,

Petitioners,

-vs-

PATRICK RAMIREZ,

Respondent,

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION TO

PETITION FOR A WRIT OF CERTIORARI

PATRICK RAMIREZ, pro se
DOC#24767 WCC P.O. Box 473
Westville, Indiana 46391-0473

Respondent

QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Seventh Circuit correctly reversed the district court's *sua sponte* dismissal of Patrick Ramirez's *pro se* civil rights complaint, when it cannot be said beyond doubt that Ramirez can prove no set of facts in support of his claim which would entitled him to relief?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NO. 84-1013

VERNAL BOUGH, THOMAS LLOYD, and EARL HOWARD, Petitioner, -vs- PATRICK RAMIREZ, Respondent,	On Appeal From The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION TO

PETITION FOR A WRIT OF CERTIORARI

Respondent Patrick Ramirez respectfully requests that the Court deny the issuance of a Writ of Ceritorari directed to the United States Court of Appeals for the Seventh Circuit and, thereby, refuse to review the decision of that court in Cause Number 83-2702.

OPINION BELOW

The Seventh Circuit Court of Appeals entered an opinion in this Cause on August 22, 1984. The opinion is set forth in the Petitioners' Apendix A and is unreported. The Petitioners then timely filed a petition for rehearing and sugrestion for rehearing in banc, and that petition was denied by the Court of Appeals in this cause on September 21, 1984.

STATEMENT OF THE CASE:

This case is before the Court on a Petition for A writ of Certiorari filed by Defendants Vernal Bourn, Thomas Lloyd, and Earl Howard (hereinafter referred to as "Petitioners".) These Petitioners request the Court to review a judgment and order entered by the Seventh Circuit Court of Appeals, which reversed and remanded the district court's sua sponte

dismissal of Plaintiff Patrick Ramirez's (hereinafter referred to as the "Respondent") complaint. The judgment sought to be reviewed is fully set forth in Petitioners' Appendix A.[1/]

Pursuant to 42 U.S.C. §1983, Respondent filed his pro se complaint in the United States District Court for the Southern District of Indiana, alleging that Petitioners had denied him due process and rights secured for him by Article V(d) of the Interstate Agreement on Detainers (hereinafter referred to as the "IAD"), 18 U.S.C.App. [2/] The Respondent alleged that Fred G. Osborne, the prosecuting attorney for Howard County, Indiana, prepared and lodged a detainer against Respondent with the warden of the Southern Michigan Prison, where Respondent was then incarcerated. Prosecutor Osborne sought the return of Respondent to Indiana on the detainer to face felony charges on two counts

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1/ References to appendicies in this brief are all directed to the Petitioners' Appendicies.

2/ Respondent also sued Marjorie Barker, IAD Administrator for the State of Indiana, but the complaint was dismissed before Barker filed an answer. Barker did not enter an appearance on appeal to the Seventh Circuit, nor has she joined in the present proceeding. She is, however, still a party to this action in the district court below and she has filed an answer of general denial since remand of this case by the Seventh Circuit.

of dealing in marijuana, under Howard County Superior Court Cause Number 470. A request under Article IV of the IAD was also sent to the Michigan State Prison for temporary custody of Respondent.

On July 21, 1981, Petitioners Bough and Lloyd, as officers of the Howard County Sheriff's Department, transported Respondent from Michigan to Howard County, Indiana. The return was based on the detainer for two counts of dealing in marijuana, under Cause Number 470. Respondent had waived his right to a pretransfer hearing to challenge the return to Howard County on these particular charges only.

On July 23, 1981, Respondent appeared in the Howard Superior Court. The purpose of this hearing was suppose to be for the sole reason of entering pleas of guilty to the two counts of dealing in marijuana under Cause Number 470. Notwithstanding, at this court appearance, Respondent was notified for the first time that the State of Indiana also intended to prosecute him for three additional felonies under Howard County Superior Court Cause Number 424. These additional charges were wholly unrelated to the criminal charges under Cause Number 470; they were not mentioned in the detainer and they did not arise out of the same transaction as did the charges named in the detainer.

Respondent informed the state court judge that no detainer had been lodged against him with Michigan authorities seeking

his return for the three criminal charges under Cause Number 424. Respondent also informed the state court judge that he would have contested the transfer had he known that the State of Indiana intended to also prosecute him for the charges under Cause Number 424.

Upon gaining knowledge of Indiana's intent to prosecute him for the crimes in Cause Number 424, Respondent immediately notified Petitioners Bough and Lloyd (the officers who actually transferred Respondent from Michigan to Howard County) and Petitioner Howard (the officer who gave orders to Bough and Lloyd to effectuate the transfer) that a violation of Article V(d) of the IAD was about to occur in this case. Respondent explained to these three petitioners that the State of Indiana was about to illegally prosecute him for crimes that did not form the basis of the detainer, or arise out of the same transaction as did the crimes listed in the detainer, and begged them to take any type of action to remedy or correct the imminent violation. Albeit that each of these petitioners, as officers and employees of a political subdivision of the State of Indiana were under a legal duty pursuant to Article 9 of the IAD to enforce the terms of the agreement, the Petitioners stood idly and did not offer the slightest bit of assistance to Respondent.

Consequently, on May 17, 1982, Respondent was adjudged guilty of the three criminal charges in Cause Number 424 and on

June 28, 1982, he was sentenced to five years in prison on each count, with the sentences ordered to be served consecutively to the sentences imposed under Cause Number 470.

Respondent alleged in his complaint that the Petitioners were negligent in their duties to enforce the provisions of the IAD by failing and refusing to rectify the alleged violation once it was brought to their attention and that as a result Respondent had suffered deprivation of rights, privileges, and immunities guaranteed to him by the IAD; that he had been fraudulently tricked and deceived into waiving his right to a pretransfer hearing; and, that the Petitioners acted under color of state law. Petitioners' Appendix D. Respondent sought both damages and declaratory relief.

On July 28, 1983, Petitioners filed their answers to Respondent's complaint. On August 19, 1983, the district court, sua sponte, dismissed the complaint for failure to state a claim upon which the relief sought could be granted. The district court held that Petitioners could not be held responsible for the alleged violations of the IAD, reasoning that the decision to prosecute Respondent on charges not listed in or related to the detainer was a decision made by the Howard County Prosecuting Attorney and overseen by the state court judge, both of whom were not named in the complaint as defendants because they were absolutely immune from civil suit for their action. Petitioners' Appendix B.

Respondent appealed the sua sponte dismissal to the Seventh Circuit Court of Appeals. On August 22, 1984, the district court's judgment was reversed. In reversing the Court of Appeals used a two-pronged analytical approach of disposing with the issue raised on appeal. First, the Seventh Circuit determined that Respondent's complaint pleaded an arguable violation of Article V(D) of the IAD, 18 U.S.C.App. Secondly, after reviewing the pleadings in a light most favorable to Respondent, the Court of Appeals determined that it could not be said beyond doubt that Petitioners would not have had a duty to prevent or remedy the violation. As a result, the Seventh Circuit sounily believed the district court had prematurely dismissed this case, reversed the sua sponte dismissal, and remanded for further proceedings so an adequate record could be developed in order that important issues could be formulated to determine whether it could be said as a matter of law that the complaint fails to state a claim.

SUMMARY OF THE ARGUMENT:

The prevailing law is that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that a plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

The complaint in this case was filed pursuant to 42 U.S.C. §1983. In order to state a claim under this statute, the complaint must show two things. First, that Respondent has suffered the deprivation of a federally protected right, privilege or immunity. Second, that such deprivation was caused by a person acting under color of state law. The complaint in this case meets these requirements.

The Seventh Circuit Court of Appeals correctly reversed the district court's sua sponte dismissal of this case. This is true because the record herein has not yet been sufficiently developed to make competent and intelligent judgments concerning vital issues, which must yet be determined, before it can be said that as a matter of law the complaint fails to state a claim on which the relief sought can be granted.

ARGUMENT

In Conley v. Gibson, 355 U.S. 41, 45-46 (1957), this Court stated that ". . .a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. . ." In Haines v. Kerner, 404 U.S. 519, 520-521 (1972), the Court reaffirmed this basic principle of law and further held that allegations in a pro se complaint must be held to a less stringent standard than those pleadings drafted by learned counsel in considering whether to

dismiss a complaint for failure to state a claim.

In the present case, Respondent filed his pro se complaint pursuant to 42 U.S.C. §1983, which provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizens of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

This Court has held that in order for a complainant to establish a claim under 42 U.S.C. §1983, he must do only two things. First, the plaintiff must have sufferred the deprivation of a federally protected right, privilege or immunity. Second, the deprivation must have been caused by a person acting under color of state law. Parratt v. Taylor, 451 U.S. 527 (1981).

Here, Respondent alleges in his complaint that the Petitioners defied him due process and rights secured by him under Article V(d) of the IAD, 18 U.S.C.App. More particularly Respondent alleges that Petitioners were under a duty to enforce the provisions of the IAD, and failed to do so in this case, resulting in Respondent being prosecuted for criminal charges outside of the terms of the IAD. The complaint alleges that

this particular duty is imposed upon Petitioners by virtue of Article IX of the IAD, which provides:

> All courts, departments, agencies, officers and employees of this state (Indiana) and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes.

Petitioners' Appendix E.

In reversing the district court's sua sponte dismissal in this case, the Seventh Circuit felt that Respondent's complaint stated an arguable violation of his rights under Article V(d) of the IAD, which provides in pertinent part that:

> (d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. . .

Petitioners' Appendix E.

Viewing the facts of this case in a light most favorable to Respondent, it is clear that the complaint does state an arguable violation of Article V(d) of the IAD since Respondent was prosecuted for criminal charges (after having been returned from Michigan to Indiana pursuant to Article IV of the IAD) which did not form the basis of the detainer or arise out of the same transaction. Hence, since this Court has

previously held that construction of the IAD presents a question of federal law, Culyer v. Adams, 449 U.S. 433 (1981), and that such type of a compact involves federal rights, Petty v. Tennessee-Missouri Bridge Commission, 359 U.S. 275 (1959), the complaint does state facts from which it can be easily inferred that Respondent has sufferred the deprivation of federally protected rights, privileges, or immunities. Parratt v. Taylor, supra.

The Seventh Circuit was unable to say beyond doubt that Respondent could not prove any set of facts in support of his claim that Petitioners were the "persons" who caused him to suffer the claimed deprivations. Conley v. Gibson, supra. This was because the record in this case has not yet been developed enough to make a competent and intelligent judgment concerning this vital matter.

The district court dismissed this case before all named defendants filed an answer and before vital discovery could be conducted. 3/ Recognizing that there may be a point where dismissal for failure to state a claim is appropriate, the Court of Appeals reasoned that that point had not yet been

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3/ Since the Seventh Circuit's reversal, Defendant Barker has filed her answer by generally denying all allegations in the Complaint. Furthermore, Respondent has served interrogatories on each of the defendants, which have not yet been answered, and the district court has entered a Pre-Trial Scheduling Order.

reached in this case, on this record, because "several issues have yet to be determined before it can be said that, as a matter of law, the complaintfails to state a claim on which the relief sought can be granted." Petitioners' Appendix A.

In their Petition for A Writ of Certiorari, Petitioners pay extravagant lip service to the fact that it was the state prosecutor who made the decision to prosecute Respondent outside of the provisions of the IAD, and that it was the state court judge who oversaw the illegal prosecution, knowing very well that both of these individuals are shielded from civil prosecution by virtue of absolute immunity. Stump v. Sparkman, 435 U.S. 349 (1978) and Imbler v. Pachtman, 424 U.S. 409 (1976). Notwithstanding, the Petitioners ask this Court (on the basis of an inadequately developed record) to hold that the state court judge and prosecutor are alone responsible for the injustices suffered by Respondent.

The Seventh Circuit Court of Appeals has already rejected such an invitation on direct appeal in this case. That court was not pursuaded that none of the Petitioners would have a duty to take action to prevent or remedy the IAD violation once it was brought to their attention. Petitioners' Appendix A. The record in this case is simply to underdeveloped to make such a judgment.

In summation, the Seventh Circuit Court of Appeals correctly reversed the sua sponte dismissal of Respondent's complaint.

Unier the particular facts of this case, it cannot be said beyond doubt that Respondent-Plaintiff Patrick Ramirez can prove no set of facts in support of his claim which would entitle him to the relief sought.

CONCLUSION:

For the foregoing reasons, Respondent Patrick Ramirez respectfully requests that the Petitioners' Petition for A Writ of Certiorari be denied.

Respectfully submitted,

Patrick Ramirez
Respondent-Plaintiff pro se
DOC#24767 O-Bldg.
Westville Correctional Center
P.O. Box 473
Westville, Indiana 46391-0473

Dated this 1st day of March, 1985.

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